IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7422 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMANBHAI MANGABHAI HALPATI

Versus

BANK OF BARODA

Appearance:

1. Special Civil Application No. 7422 of 2001

MR BA SURTI for Petitioner No. 1

MR DARSHAN M PARIKH for Respondents No. 1-2

NOTICE SERVED BY DS for Respondents No. 1,3-2

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 04/02/2002

ORAL JUDGEMENT

The petitioner is an employee of the respondent bank, who has approached this court with a prayer that

initiation of departmental inquiry against him be quashed.

2. Learned advocate Shri Surti appearing for the petitioner has submitted that the petitioner is facing a criminal case on the subject-matter of the inquiry proceedings and if the inquiry proceedings are permitted to be continued, the petitioner's interest might be prejudicially affected in the criminal trial. It has been submitted by him that the charges levelled against the petitioner in the criminal case as well as in the departmental proceedings are the same and, therefore, the respondent authorities should not initiate departmental proceedings against the petitioner till the criminal case is over. It has been also submitted by the learned advocate that the petitioner is prepared to forego his right to get subsistence allowance if the respondent authorities decide to postpone the inquiry proceedings till conclusion of the criminal case.

3. Learned advocate Shri Surti has relied upon the judgment delivered in case of State of Rajasthan v. B.K. Meena and others, AIR 1997 SC 13, to substantiate his argument.

4. On the other hand, learned advocate Shri Darshan Parikh appearing for the respondent employer has submitted that though the incidents giving rise to the criminal and departmental proceedings are same, the charges levelled in the criminal case and in the departmental proceedings are absolutely different. He has referred to the said charges and has submitted that in view of the fact that the charges are different, it is open to the respondent employer to initiate departmental proceedings against the petitioner even if the criminal proceedings are pending. He has relied upon judgment delivered in the case of Kirankumar R. Baxi v. United Commercial Bank and others, 39(1) GLR 256. It has been further submitted by learned advocate Shri Parikh that in the departmental proceedings chargesheet has already been given to the petitioner but in view of observations made by this court in its order dated 10.9.2001, the proceedings are adjourned from time to time in view of request for adjournments made by the petitioner.

5. I have heard the learned advocates and have also perused the judgments cited by them.

6. Upon perusal of the papers pertaining to the case, it is very clear that the charges levelled against the petitioner in the criminal case as well as in the

departmental proceedings are not same though the incidents giving rise to the criminal case as well as the departmental proceedings are same.

7. It is a settled legal position that if the charges levelled against a delinquent in the criminal case as well as in the department proceedings are different, there is no bar to initiate departmental proceedings against the concerned delinquent. It is a known fact that criminal proceedings take substantially long time and if the departmental proceedings are not initiated and completed during the said period, because of the delay, the departmental proceedings might be adversely affected. It might become difficult for the employee or the employer to adduce certain evidence on account of delay and therefore even the Hon'ble Apex Court has held that when the charges levelled against the delinquent in the departmental proceedings and in the criminal case are not same, the employer can proceed further with the departmental proceedings.

8. Looking to the judgment delivered by this court in the case of Kirankumar R. Baxi (supra), it is very clear that even if the incident is same, but if the charges levelled in the criminal case as well as in the departmental proceedings are different, the employer can be permitted to proceed further with the departmental proceedings. Moreover, even in the judgment cited by learned advocate Shri Surti appearing for the petitioner, the Hon'ble Supreme Court has clearly observed that there is no legal bar for both the proceedings, disciplinary and criminal, to go on simultaneously if charges are different in both the proceedings. As stated hereinabove, in the instant case, the charges are not identical and as the charges are different, in my opinion, the judgment delivered in case of State of Rajasthan v. B.K. Meena (supra) would not help the petitioner. It is also pertinent to note that the Division Bench of this court in the case of Kirankumar Baxi (supra) had duly considered the judgment delivered in case of State of Rajasthan v. B.K. Meena (supra) and thereafter it finally came to the conclusion that even if the incident is the same, the departmental proceedings can be initiated against the delinquent if the charges levelled in the criminal case as well as the departmental proceedings are different.

9. In view of the facts of the case, as charges levelled against the petitioner in the departmental proceedings and in the criminal proceedings are

different, in my opinion, the petitioner is not entitled to the reliefs claimed for in the petition. The petition is, therefore, rejected. Notice is discharged.

(A.R. Dave, J.)

(hn)